

**U.S. District Court
EASTERN DISTRICT OF NORTH CAROLINA (Western Division)
CIVIL DOCKET FOR CASE #: 5:16-cv-00386-BR**

Brier Creek Integrated Pain & Spine PLLC v. United States
Department of Health & Human Services et al
Assigned to: Senior Judge W. Earl Britt
Cause: 05:552 Freedom of Information Act

Date Filed: 06/13/2016
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**Brier Creek Integrated Pain & Spine
PLLC**

represented by **Frank S. Kirschbaum**
Wyrick Robbins Yates & Ponton, LLP
4101 Lake Boone Trail, Suite 300
Post Office Drawer 17803
Raleigh, NC 27607
919-781-4000
Fax: 919-781-4865
Email: fkirschbaum@wyrick.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles George
Wyrick Robbins Yates & Ponton, LLP
4101 Lake Boone Trail, Suite 300
Post Office Drawer 17803
Raleigh, NC 27607
919-781-4000
Fax: 919-781-4865
Email: cgeorge@wyrick.com
ATTORNEY TO BE NOTICED

V.

Defendant

**United States Department of Health &
Human Services**

represented by **Christopher M. Anderson**
United States Attorney's Office
310 New Bern Avenue, Suite 800
Raleigh, NC 27601
919-856-4530
Fax: 919-856-4821
Email: Michael.Anderson7@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rudy E. Renfer
United States Attorney's Office
310 New Bern Avenue, Suite 800
Raleigh, NC 27601
919-856-4046
Fax: 919-856-4487
Email: rudy.e.renfer@usdoj.gov
TERMINATED: 03/09/2018
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Sylvia Burwell
*in her official capacity as Secretary of
Health & Human Services*

represented by **Christopher M. Anderson**
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Rudy E. Renfer

(See above for address)

TERMINATED: 03/09/2018

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant**Centers for Medicare & Medicaid Services**represented by **Christopher M. Anderson**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Rudy E. Renfer

(See above for address)

TERMINATED: 03/09/2018

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant**Andy Slavitt***in his capacity as the Acting
Administrator of the Centers for
Medicare & Medicaid Services*represented by **Christopher M. Anderson**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Rudy E. Renfer

(See above for address)

TERMINATED: 03/09/2018

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|----------|---|
| 06/13/2016 | <u>1</u> | COMPLAINT against Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Filing fee \$ 400 receipt number 0417-3718118.), filed by Brier Creek Integrated Pain & Spine PLLC. (Attachments: # <u>1</u> Exhibit A – January 19, 2016 FOIA Request, # <u>2</u> Exhibit B – January 22, 2016 Letter from CMS, # <u>3</u> Exhibit C – March 31, 2016 BCIPS Administrative Appeal, # <u>4</u> Exhibit D – April 7, 2016 Letter from CMS, # <u>5</u> Civil Cover Sheet, # <u>6</u> Proposed Summons to U.S. Dept of Health & Human Services, # <u>7</u> Proposed Summons to Sylvia Burwell, # <u>8</u> Proposed Summons to Centers for Medicare & Medicaid Services, # <u>9</u> Proposed Summons to Andy Slavitt) (George, Charles) (Entered: 06/13/2016) |
| 06/13/2016 | <u>2</u> | Notice of Appearance filed by Charles George on behalf of Brier Creek Integrated Pain & Spine PLLC. (George, Charles) (Entered: 06/13/2016) |
| 06/13/2016 | <u>3</u> | Notice of Appearance filed by Frank S. Kirschbaum on behalf of Brier Creek Integrated Pain & Spine PLLC. (Kirschbaum, Frank) (Entered: 06/13/2016) |
| 06/13/2016 | <u>4</u> | Financial Disclosure Statement by Brier Creek Integrated Pain & Spine PLLC (George, Charles) (Entered: 06/13/2016) |
| 06/14/2016 | <u>5</u> | Summons Issued as to Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt and United States Department of Health & Human Services. (Marsh, K) (Entered: 06/14/2016) |
| 07/14/2016 | <u>6</u> | Notice of Appearance filed by Rudy E. Renfer on behalf of Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services. (Renfer, Rudy) (Entered: 07/14/2016) |
| 07/14/2016 | <u>7</u> | MOTION for Extension of Time to File Answer regarding <u>1</u> Complaint,, filed by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United |

| | | |
|------------|-----------|--|
| | | States Department of Health & Human Services. (Attachments: # <u>1</u> Text of Proposed Order) (Renfer, Rudy) (Entered: 07/14/2016) |
| 07/14/2016 | | Motion Referred to Julie Richards Johnston, Clerk of Court: <u>7</u> MOTION for Extension of Time to File Answer regarding <u>1</u> Complaint. (Romine, L.) (Entered: 07/14/2016) |
| 07/15/2016 | | TEXT ORDER granting defendants' <u>7</u> motion for extension of time. Defendants shall have through and including August 17, 2016 to file an answer or otherwise respond to the complaint. Signed by Julie Richards Johnston, Clerk of Court on 7/15/2016. (Hockaday, A.) (Entered: 07/15/2016) |
| 08/15/2016 | <u>8</u> | Second MOTION for Extension of Time to File Answer regarding <u>1</u> Complaint,, filed by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services. (Attachments: # <u>1</u> Text of Proposed Order) (Renfer, Rudy) (Entered: 08/15/2016) |
| 08/15/2016 | | Motion Referred to Julie Richards Johnston, Clerk of Court: <u>8</u> Second MOTION for Extension of Time to File Answer regarding <u>1</u> Complaint. (Romine, L.) (Entered: 08/15/2016) |
| 08/15/2016 | | TEXT ORDER granting defendants' D.E. <u>8</u> second motion for extension of time. Defendants shall have through and including October 17, 2016 to file an answer or otherwise respond to the complaint. Signed by Julie Richards Johnston, Clerk of Court, on 8/15/2016. (Johnston, J.) (Entered: 08/15/2016) |
| 10/12/2016 | <u>9</u> | Third MOTION for Extension of Time to File Answer regarding <u>1</u> Complaint,, filed by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services. (Attachments: # <u>1</u> Text of Proposed Order) (Renfer, Rudy) (Entered: 10/12/2016) |
| 10/12/2016 | | Motion Referred to US Magistrate Judge James E. Gates regarding: <u>9</u> Third MOTION for Extension of Time to File Answer regarding <u>1</u> Complaint. (Marsh, K) (Entered: 10/12/2016) |
| 10/13/2016 | <u>10</u> | ORDER granting <u>9</u> Motion for Extension of Time to Answer. Counsel should read order in its entirety for critical deadlines. Signed by Magistrate Judge James E. Gates on 10/13/2016. (Marsh, K) (Entered: 10/13/2016) |
| 12/14/2016 | <u>11</u> | ANSWER to <u>1</u> Complaint,, by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services. (Renfer, Rudy) (Entered: 12/14/2016) |
| 02/06/2017 | <u>12</u> | ORDER FOR DISCOVERY PLAN sent to all parties. Signed by Julie Richards Johnston, Clerk of Court on 2/6/2017. (Marsh, K) (Entered: 02/06/2017) |
| 03/03/2017 | <u>13</u> | MOTION to Stay regarding <u>12</u> Order for Discovery Plan <i>Motion to Stay Discovery and for the Court to Schedule Joint Status Reports</i> filed by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services. (Attachments: # <u>1</u> Exhibit A – Declaration of Hugh Gilmore) (Renfer, Rudy) (Entered: 03/03/2017) |
| 03/03/2017 | | Motion Referred to US Magistrate Judge James E. Gates regarding: <u>13</u> MOTION to Stay regarding <u>12</u> Order for Discovery Plan <i>Motion to Stay Discovery and for the Court to Schedule Joint Status Reports</i> . (Marsh, K) (Entered: 03/03/2017) |
| 03/17/2017 | <u>14</u> | RESPONSE to Motion regarding <u>13</u> MOTION to Stay regarding <u>12</u> Order for Discovery Plan <i>Motion to Stay Discovery and for the Court to Schedule Joint Status Reports</i> filed by Brier Creek Integrated Pain & Spine PLLC. (Attachments: # <u>1</u> Index of Exhibits, # <u>2</u> Exhibit 1 – Letter from CMS to C. Reid dated June 23, 2016, # <u>3</u> Exhibit 2 – E–mail thread from C. George to R. Renfer from July 12, 2016, # <u>4</u> Exhibit 3 – Letter from CMS to C. Reid dated August 2, 2016, # <u>5</u> Exhibit 4 – Letter from B. Durand to CMS dated August 4, 2016 transmitting \$8,165.00 check, # <u>6</u> Exhibit 5 – E–mail thread from C. George to R. Renfer from August 31, 2016, # <u>7</u> Exhibit 6 – E–mail from C. Reid to CMS dated September 1, 2016, # <u>8</u> Exhibit 7 – Email thread from C. George to R. Renfer from December 6, 2016, # <u>9</u> Exhibit 8 – Email thread from C. George to R. Renfer from January 19, 2017) (George, Charles) (Entered: 03/17/2017) |

| | | |
|------------|-----------|---|
| 03/31/2017 | <u>15</u> | REPLY to Response to Motion regarding <u>13</u> MOTION to Stay regarding <u>12</u> Order for Discovery Plan <i>Motion to Stay Discovery and for the Court to Schedule Joint Status Reports</i> filed by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services. (Attachments: # <u>1</u> Supplemental Declaration of Hugh Gilmore, # <u>2</u> Exhibit B – Charles George email) (Renfer, Rudy) (Entered: 03/31/2017) |
| 03/08/2018 | <u>16</u> | Notice of Substitution of Counsel filed by Christopher M. Anderson on behalf of Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services substituting for Rudy E. Renfer. (Anderson, Christopher) (Entered: 03/08/2018) |
| 03/20/2018 | <u>17</u> | ORDER granting <u>13</u> Motion to Stay. All discovery in this case, including the convening of a conference and filing of a discovery plan pursuant to Fed. R. Civ. P. Rule 26(f) is STAYED pending further order of the court. The court will hold a telephone conference with counsel on Tuesday, 3/27/2018, at 3:00 p.m. The parties are reminded to read the order in its entirety. Signed by US Magistrate Judge James E. Gates on 3/20/2018. (Creasy, L.) (Entered: 03/20/2018) |
| 03/20/2018 | | NOTICE of Hearing: Telephonic Conference set for 3/27/2018 at 3:00 PM before US Magistrate Judge James E. Gates pursuant to <u>17</u> Order. (Creasy, L.) (Entered: 03/20/2018) |
| 03/27/2018 | <u>18</u> | Minute Entry for proceedings held before Magistrate Judge James E. Gates in Raleigh. Telephone Conference held on 3/27/2018. Counsel for parties attended telephone conference. Counsel for the parties advise the court of their respective positions regarding production of documents and the length of time to complete production. The court will take this matter under advisement. (Court Reporter – FTR) (Horton, B.) (Entered: 03/28/2018) |
| 03/28/2018 | | TEXT ORDER – Defendants are directed to file copies of the production orders referenced in paragraphs 9a and 9b of the Supplemental Declaration of Hugh Gilmore (D.E. 15–1) by 30 March 2018. Entered by Magistrate Judge James E. Gates on 3/28/2018. (Horton, B.) (Entered: 03/28/2018) |
| 03/30/2018 | <u>19</u> | Notice filed by United States Department of Health & Human Services regarding Text Order, <i>dated March 28, 2018</i> . (Attachments: # <u>1</u> Declaration of Hugh Gilmore) (Anderson, Christopher) (Entered: 03/30/2018) |
| 03/30/2018 | | Notice at <u>19</u> Referred to United States Magistrate Judge James E. Gates on this date pursuant to the Text Order entered on 3/28/2018. (Edwards, S.) (Entered: 04/04/2018) |
| 04/10/2018 | <u>20</u> | Incorrect document entered. Correct document entered at Docket Entry 21 Modified on 4/11/2018 (Moore, P.). (Entered: 04/10/2018) |
| 04/10/2018 | <u>21</u> | ORDER regarding <u>20</u> Order establishing a schedule for the production of records sought by the Plaintiff. In order to help ensure that the production proceeds as directed, the parties shall file a joint status report on a monthly basis by the tenth day of each month. Pursuant to this directive, defendants shall file their first joint status report which shall relate to April 2018, by 10 May 2018. Counsel should read the order in its entirety for critical deadlines and information. Signed by United States Magistrate Judge James E. Gates on 4/10/2018. (Edwards, S.) Modified on 4/11/2018 (Moore, P.). (Entered: 04/10/2018) |
| 05/10/2018 | <u>22</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 05/10/2018) |
| 05/11/2018 | | Remark: Referred the <u>22</u> Status Report to United States Magistrate Judge James E. Gates pursuant to the <u>21</u> Order. (Edwards, S.) (Entered: 05/11/2018) |
| 06/08/2018 | <u>23</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 06/08/2018) |
| 06/08/2018 | | Remark: Referred the <u>23</u> Status Report to United States Magistrate Judge James E. Gates pursuant to the <u>21</u> Order. (Edwards, S.) (Entered: 06/08/2018) |

| | | |
|------------|-----------|--|
| 07/10/2018 | <u>24</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 07/10/2018) |
| 07/11/2018 | | Referred the <u>24</u> Status Report to United States Magistrate Judge James E. Gates pursuant to the <u>21</u> Order. (Edwards, S.) (Entered: 07/11/2018) |
| 08/10/2018 | <u>25</u> | STATUS REPORT (<i>Joint</i>) by United States Department of Health & Human Services (Anderson, Christopher) (Entered: 08/10/2018) |
| 08/10/2018 | | Referred the <u>25</u> Status Report to United States Magistrate Judge James E. Gates pursuant to the <u>21</u> Order. (Edwards, S.) (Entered: 08/10/2018) |
| 09/05/2018 | <u>26</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 09/05/2018) |
| 09/05/2018 | | Referred <u>26</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Herrmann, L.) (Entered: 09/05/2018) |
| 10/09/2018 | <u>27</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 10/09/2018) |
| 10/09/2018 | | Referred <u>27</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Herrmann, L.) (Entered: 10/09/2018) |
| 11/06/2018 | <u>28</u> | Disregard – Corrected document refiled at <u>29</u> . STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) Modified on 11/7/2018 (Herrmann, L.) (Entered: 11/06/2018) |
| 11/06/2018 | <u>29</u> | STATUS REPORT (<i>Corrected – Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 11/06/2018) |
| 11/07/2018 | | Referred <u>29</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Herrmann, L.) (Entered: 11/07/2018) |
| 12/07/2018 | <u>30</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 12/07/2018) |
| 12/10/2018 | | Referred <u>30</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Edwards, S.) (Entered: 12/10/2018) |
| 01/08/2019 | <u>31</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 01/08/2019) |
| 01/09/2019 | | Referred <u>31</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Edwards, S.) (Entered: 01/09/2019) |
| 02/08/2019 | <u>32</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 02/08/2019) |
| 02/08/2019 | | Referred <u>32</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Herrmann, L.) (Entered: 02/08/2019) |
| 03/05/2019 | <u>33</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 03/05/2019) |
| 03/05/2019 | | Referred <u>33</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Edwards, S.) (Entered: 03/05/2019) |
| 04/10/2019 | <u>34</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 04/10/2019) |

| | | |
|------------|-----------|---|
| 04/11/2019 | | Referred <u>34</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Edwards, S.) (Entered: 04/11/2019) |
| 05/07/2019 | <u>35</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 05/07/2019) |
| 05/07/2019 | | Referred <u>35</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Edwards, S.) (Entered: 05/07/2019) |
| 06/07/2019 | <u>36</u> | STATUS REPORT (<i>Joint</i>) by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services (Anderson, Christopher) (Entered: 06/07/2019) |
| 06/10/2019 | | Referred <u>36</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Edwards, S.) (Entered: 06/10/2019) |
| 06/13/2019 | <u>37</u> | Order Setting Hearing – In order to determine the current status of the case, the court will hold a telephone conference with counsel on 6/27/2019 at 3:00 PM before Magistrate Judge James E. Gates. Counsel is reminded to read the order in its entirety for critical deadlines and information. Signed by United States Magistrate Judge James E. Gates on 6/12/2019. (Edwards, S.) (Entered: 06/13/2019) |
| 06/27/2019 | <u>38</u> | Minute Entry for proceedings held before US Magistrate Judge James E. Gates in Raleigh: Telephonic Status Conference held on 6/27/2019. Counsel for parties attended telephone conference. Counsel for the parties advise the court of their respective positions regarding production of documents and the length of time to complete production of the Vaughn index. The court will take this matter under advisement. Written order to follow. (Court Reporter FTR) (Sellers, N.) (Entered: 06/27/2019) |
| 06/28/2019 | <u>39</u> | ORDER following a telephone conference, the court directs the parties to file by 7/11/2019 a joint motion and proposed order setting out a proposed schedule for provision by defendants to plaintiff of a Vaughn index for the document production by defendants to plaintiff in this case, including the final set of documents defendants represented in the conference would be produced within the next several days. Counsel is reminded to read the order in its entirety for critical deadlines and information. Signed by US Magistrate Judge James E. Gates on 6/28/2019. (Edwards, S.) (Entered: 06/28/2019) |
| 07/10/2019 | <u>40</u> | STATUS REPORT by United States Department of Health & Human Services (Anderson, Christopher) (Entered: 07/10/2019) |
| 07/11/2019 | | Referred <u>40</u> Status Report to United States Magistrate Judge James E. Gates pursuant to <u>21</u> Order. (Herrmann, L.) (Entered: 07/11/2019) |
| 07/11/2019 | <u>41</u> | Joint MOTION For Entry of a Scheduling Order for Production of a Vaughn Index filed by Sylvia Burwell, Centers for Medicare & Medicaid Services, Andy Slavitt, United States Department of Health & Human Services. (Attachments: # <u>1</u> Text of Proposed Order) (Anderson, Christopher) (Entered: 07/11/2019) |
| 07/12/2019 | | Motion Referred to US Magistrate Judge James E. Gates: <u>41</u> Joint MOTION For Entry of a Scheduling Order for Production of a Vaughn Index. (Herrmann, L.) (Entered: 07/12/2019) |